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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|--|---------------------|------------------|
| 09/868,749 | 06/20/2001 | Elise Anna Walthera Hendrina Van Den Hoven | NL000372 | 3507 |

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

VU, KIEU D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2173

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/868,749

Applicant(s)

VAN DEN HOVEN ET AL.

Examiner

Kieu D. Vu

Art Unit

2173

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Kieu D. Vu

Continuation of 7b: The proposed amendments to claim 14 correct a typographical error and a simple insufficient antecedent basis error. The amended claim 14 would be rejected under the same ground and rationale applied in the Final Rejection.

Continuation of 11. does NOT place the application in condition for allowance because: The June 30, 2005 Final Rejection is proper since the new grounds of prior arts were necessitated by the Applicant's Amendment filed 07/27/04 (see section 16 of the June 30, 2005 Final). Applicant's Amendment filed 07/27/04 added new limitations to claims 1, 2, 7, and added new claims 9-13. The 01/13/05 Office Action should have been made Final as necessitated by the Amendment filed 07/27/04. However, since Examiner applied new 101 rejection for claims 1, 2, 4, and 6, the 01/13/05 Office Action was made non-final to give the Applicant an opportunity to response to the 101 rejection for claims 1, 2, 4, and 6. Since the Applicant already had an opportunity to response to the 101 rejection for claims 1, 2, 4, and 6 in the Amendment submitted April 13, 2005, the June 30, 2005 is properly made Final.

Applicant argues "Regarding Claims 1-2, 4, and 6, the Examiner states these claims do not define statutory subject matter because they recite that the device is a technological device and as such do not define statutory subject matter." However, that is not what is stated in the rejection. In fact, the Examiner states, "Regarding claims 1-2, 4, and 6, the claims claim a device per se and do not positively recite that the device is a technological device. As such, the claim invention is directed to a non-statutory subject matter."

According to Merriam-Webster's Collegiate Dictionary (Tenth Edition), a "device" is a "plan, procedure, technique". The Dictionary further defines that "procedure" is "a series of instructions for a computer that has a name by which it can be called into action". Therefore, "device" can be a computer program product. "A device" per se as claimed in claims 1, 2-4, and 6 is indeed "A computer program product" per se. It is neither tied to a technological art nor stored in a tangible computer readable medium. Therefore, claims 1, 2-4, and 6 do not result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Applicant argues, "Claim 8 positively recites a program that can readily be used by a machine. There are numerous mediums that can be used to store the computer program product defined by claim 8, and this will be apparent to those skilled in the art....electronic data storage media such as disc drives and memory technology, as well as electrical signals can be used to implement the computer program product defined by claim 8 ...to provide the device defined by Claim 1". However, Claim 8 only recites "A computer program product" and does not positively recite that the computer program product is stored on a tangible medium that can be read by a machine. A computer program product represents at best software per se and is not tied to any physical structure which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C 101. See State Street, 149 F.3d at 1374-75, 47 USPQ2d at 1602 (Fed. Cir. 1998) (MPEP 2106)

In response to Applicant argument regarding icon 306 of Pavley, it is noted that according to Merriam-Webster's Collegiate Dictionary (Tenth Edition), "icon" is "a graphic symbol on a computer display screen that suggests the purpose of an available function". Therefore, it is clear that icon 306 of Pavley has function(s) related to selection. Furthermore, Pavley teaches the slide show is performed in response to a selection of a border area of image 302 as presented in the Final Office Action.